

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

R. ANNIE MCCOY)	
Charging Party,)	HRB CASE NO. 0102014268,
)	0109014269 & 0109014270
vs.)	
)	
YELLOWSTONE CITY-COUNTY)	FINAL AGENCY DECISION
HEALTH DEPARTMENT D/B/A)	
RIVERSTONE HEALTH)	
JOHN FELTON & PHYLLIS JENKINS)	
Respondent.)	

Charging Party, R. Annie McCoy, filed a complaint with the Department of Labor and Industry (Department) on February 8, 2010, which alleged discrimination in employment on the basis of creed. Following an informal investigation, the Department determined that a preponderance of the evidence supported McCoy's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA.

The hearings officer issued a Decision on July 11, 2011, which determined as a matter of law that McCoy's philosophical beliefs against receiving an influenza vaccination did not rise to the level of a creed and, therefore, did not warrant the protections provided by the Montana Human Rights Act. Consequently, the hearing officer determined that McCoy failed to prevail in her claim of discrimination.

McCoy filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on November 17, 2011. Alex Rate, attorney, appeared and presented oral argument on behalf of McCoy. Bruce Fain, attorney, appeared and presented oral argument on behalf of the Respondent.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission affirms the hearing officer's findings of fact and conclusions of law in its entirety. The Commission notes that both parties offered very compelling arguments in this case. However, bound by the standard of review, the Commission determines that substantial, credible evidence supports the hearing officer's decision and that the hearing officer correctly applied the law.

ORDER

IT IS HEREBY ORDERED, the appeal of R. Annie McCoy is denied.

IT IS FURTHER ORDERED, the Commission hereby adopts and incorporates the entire Hearing Officer Decision in this matter, dated July 11, 2011, within this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order.

DATED this 21st day of November 2011.

/L.M.Minich/
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing FINAL AGENCY DECISION was mailed to the following by U.S.

Mail, postage prepaid, on this 21st day of November 2011.

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